IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

CWP No. 610 OF 2006

Date of decision: 30.04.2007

Smt. Thakari Devi ..Petitioner

Versus

Union of India ..Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta,J.

The Hon'ble Mr Justice Surinder Singh,J.

Whether approved for reporting ?[1]

For the Petitioner **Mr J L Bhardwaj, Advocate.**

For the Respondent: **Mr K B Khajuria, Central Government Counsel.**

Deepak Gupta, J *(Oral)*

The present petition has been filed by the present petitioner claiming family pension on the ground that she is the widow of late Naik Lekh Ram. According to the petitioner, she was married to Lekh Ram, after he had divorced his previous wife Smt. Rashmo Devi in the year 1969. She was shown as nominee in all the service documents and, therefore, claims family pension.

[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ?***

Lekh Ram was enrolled as Sepoy in Jammu & Kashmir Rifles on 25.9.1965. He was discharged from the Army on 1.10.1980 and immediately after his discharge he was re-employed with Defence Security Corps. He was discharged from the Defence Security Corps on 30.12.1998. Thereafter, Lekh Ram was paid pension and other retiral benefits, as per the rules.

Unfortunately, Lekh Ram expired on 5.10.2003. Therefore, the petitioner wrote to the respondents that she was the widow of late Lekh Ram and family pension be released in her favour as per the rules. Documents, including the marriage certificate, etc. asked for from the petitioner, were supplied to the respondents. The respondents raised a plea that since Lekh Ram was originally married to Smt. Rashmo Devi, the petitioner should furnish proof of divorce, having taken place between Lekh Ram and Rashmo Devi. The case of the petitioner was rejected by the respondent on the ground that the marriage of her husband late Lekh Ram and Smt. Rashmo Devi was dissolved by a customary divorce on 2.5.1969, whereas the marriage of the petitioner with Lekh Ram was solemnized on

18.9.1964 and as such her marriage could not be accepted as legal and valid. The petitioner thereafter again sent a letter to the respondents, stating therein that their may be some mistake in giving the date of marriage as 18.9.1964 instead of 18.9.1969. However, the case of the petitioner was again rejected on 18.2.2006 and thereafter, the present petition has been filed.

It would be pertinent to mention here that the respondents themselves have placed on record an affidavit of Smt. Rashmo Devi (Annexure R-1) dated 30th May, 1971 in which she has stated that she has withdrawn from the company of her husband, Lekh Ram and has divorced him according to the custom of the area. The respondents have also placed on record a certificate (Annexure R-2) issued by the Gram Panchayat Diggal, Tehsil Nalagarh, Distt. Solan (HP) dated 21.12.2006, in which it has been stated that the petitioner Smt. Thakari Devi has six children from her marriage with Lekh Ram. The elder son of the petitioner is serving in the Indian Army. The extract of the Voter List, attached with the reply, also shows Smt. Thakri Devi to be the wife of Lekh Ram.

In fact, the most damaging evidence against the respondents is the certificate signed by the deceased Lekh Ram himself in which it has been stated that he married Smt.Thakuri Devi d/o Tulsi Ram on 28.6.1971. This certificate was placed on his service record some time in the year 1971 and has been attached with the reply as Annexure R-4. In the Descriptive roll of Lekh Ram, issued by the Pension Disbursing Office, name of Smt. Thakri Devi has been mentioned as nominee to receive the pension by the deceased Lekh Ram. Annexure P-13, placed on record by the petitioner, is the Medical Treatment and CSD Facilities Entitlement Certificate of Lekh Ram, in which also the petitioner Smt. Thakari Devi is shown as dependent of Naik Lekh Ram and there is a photograph showing Lekh Ram and Smt. Thakri Devi together. To the same effect is Annexure P-14, a card issued by the Army Group Insurance Fund entitling the petitioner Smt. Thakri to the benefit of the Medical Benefit Scheme. Even in the Pension Certificate (Annexure P-15), the deceased Lekh Ram has clearly shown Smt. Thakri Devi to be his wife.

In view of the aforesaid documents, we feel that the action of the respondents in rejecting the claim of the petitioner is totally against the law. The law is well settled that where two parties live together for a long period of time, as husband and wife, there is a presumption with regard to the legitimacy of the marriage. In the present case not only the petitioner and Shri Lekh Ram were living together but there is evidence that six children were born out of the wed lock. The deceased Lekh Ram had always shown Smt. Thakari Devi to be his wife in all the relevant service records. Lekh Ram, the deceased, had clearly indicated that Smt. Thakari Devi being his wife would be entitled for all the pensionery benefits. He had also indicated that Smt. Thakari Devi as his spouse was entitled to get the medical and CSD facilities. He had in fact as far back as 1971 filed a certificate with his employer that he had married Thakri Devi. Therefore, in our considered opinion the respondents had no business or right to question or raise doubt regarding the legitimacy of the marriage of the petitioner with late Lekh Ram.

In view of the above discussion, we feel that the action of the respondents in rejecting the claim of the petitioner for grant of family pension and other benefits, if any, emanating from the death of Naik Lekh Ram is totally arbitrary and illegally and therefore, liable to be set aside.

We, therefore, allow the present petition and direct the respondents to pay the family pension to the petitioner. It is further directed that the arrears of pension from the date of death of Lekh Ram along with interest at the rate of 12% from the date the pension fell due till payment thereof shall be paid to the petitioner within a period of three months from today. The respondents shall also ensure that in future the family pension is paid on regular basis. Keeping in view the fact that the action of the respondents is totally arbitrary and illegal, we burden the respondents with a costs of Rs.5,000/- which should be paid along with the arrears of pension.

(Deepak Gupta),J.

April 30, 2007 (Surinder Singh),J.
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